

## **GETTING IT RIGHT: AVOIDING COMMON ERRORS**

## **WHY IT'S IMPORTANT TO GET IT RIGHT**

### **■ Using TRI data**

- EPA is required to make data available to the public on-line
- Data are available on-line through TRI Explorer, Envirofacts, the National Library of Medicine, and non-EPA databases
- Data are available in other forms (paper reports)
- All states receive data; some make it available electronically

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## **EPCRA SECTION 313 ENFORCEMENT**

### **■ Current enforcement trends**

- Shift from simply identifying non-reporting facilities to facilities submitting poor quality data
- Focus on multi-media inspections (i.e., examine obligations under multiple statutes)
- Encourage self-disclosure through EPA's audit policy
- Assign pollution prevention-related supplemental environmental projects (SEPs)
  - » In FY98, 36% of EPCRA penalty actions included a SEP. Most SEPs of any regulatory program

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## **EPA AUDIT POLICY**

- Audit Policy enhances environmental protection through incentives for companies to self-police, disclose and correct violations
- Companies that satisfy the Policy's criteria are eligible for up to 100% reductions in otherwise applicable penalties
- Since implemented in 1995, over 1,500 companies have self-disclosed violations at over 6,065 facilities under the policy

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## EPA AUDIT POLICY

- **Conditions to qualify (nine criteria):**
  - Systematic Discovery of the Violation through Environmental Audit or Due Diligence
  - Voluntary Discovery
  - Prompt Disclosure
  - Discovery and Disclosure Independent of Government or Third Party Plaintiff
  - Correction and Remediation
  - Prevent Recurrence
  - No Repeat Violations
  - Other Violations Excluded
  - Cooperation
- **For more information, including a copy of the Audit Policy (revised in May 2000), visit:**  
<http://es.epa.gov/oeca/ore/apolguid.html>

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## EPCRA SECTION 313 ENFORCEMENT

- **Companies violating any statutory or regulatory requirement are subject to penalties of up to \$27,500 per day per violation**
- **Companies subject to citizen suits and could also be liable for attorney fees and litigation costs**
- **Government's penalty is determined by applying the Enforcement Response Policy (ERP) to each violation**
- **Violations are assessed per chemical or obligation and per year**

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## EPCRA SECTION 313 ENFORCEMENT

- **National Nitrate Initiative:** 350 companies paid over \$1.7 million in penalties and agreed to audit over 1000 facilities for failing to report coincidentally manufactured nitrate compounds generated from nitric acid treatment. Similarly situated companies self disclosing under EPA's Audit Policy pay no penalty. The final report detailing the results of the nitrate initiative is available at:  
<http://www.epa.gov/oeca/ore/tped/nitrate.html>
- **Steeltech vs. U.S. EPA, 273 F.3d (6<sup>th</sup> Cir. 2001):** U.S. Court of Appeals for the Sixth Circuit upholds EPA's use of the EPCRA §313 Enforcement Response Policy (ERP) in imposing \$61,736 penalty and confirms that EPCRA is a strict liability statute — lack of knowledge about regulatory obligations is no defense. Available at  
<http://pacer.ca6.uscourts.gov/opinions.pdf/01a0410p-06.pdf>

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## EPCRA SECTION 313 ENFORCEMENT

- **In re Bituma-Stor Inc., EPCRA-7-99-0045 (2001):** Respondent assessed \$59,576 penalty for failing to file 3 Form Rs and 1 Tier II (EPCRA 312) Form, despite "blemish-free" environmental compliance history. Available at:  
<http://www.epa.gov/aljhome/orders/bituma3.pdf>
- **In re Dow Chemical, EPCRA-9-99-0030 (2000):** Respondent assessed \$100,000 penalty for failing to file 9 Form Rs. Available at: <http://www.epa.gov/aljhome/orders.dow.pdf>

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## EPCRA SECTION 326: CIVIL ACTIONS

- Any person may bring civil action on their own behalf against a private-sector facility owner or operator for:
  - Failure to submit emergency follow-up notices under EPCRA Section 304
  - Failure to submit an MSDS or a list of MSDS chemicals
  - Failure to complete or submit Tier I/II inventories
  - Failure to complete or submit Form Rs or Form As

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## COMMONLY MADE ERRORS

- Threshold determination errors
- Completion errors
- Release estimation errors
- Off-site transfers reporting errors
- Other waste management and source reduction errors
- Federal facility name and/or parent company name errors

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## THRESHOLD DETERMINATIONS

- Helpful hints for conducting accurate threshold determinations
  - Apply chemicals to correct threshold activity
  - Distinguish between metals and metal compounds
  - Consider *all* avenues a chemical may enter a facility; chemical qualifiers; chemical synonyms; and on-site manufacturing
  - Recognize the limitations for exemptions
- Results of incorrect threshold determinations
  - No form is submitted when one is required
  - Federal facility does not meet requirements of EO 13148

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## FORM COMPLETION CHECKLIST

- Helpful hints for completing the Form R/Form A
  - Complete all required sections of a current, valid form
  - Correctly identify the Section 313 chemical using the correct CAS number and correct listed TRI name
  - Use the NA indicator for data elements that are not relevant
  - Indicate the correct reporting year
  - Clearly identify revisions
  - Sign hardcopy of forms or certification letters for electronic submissions

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## FORM COMPLETION CHECKLIST (CONT'D)

- To avoid completion errors, use EPA's reporting software (TRHME or ATRS)
  - Software will prompt the user to complete required sections
  - Software will conduct validation check to ensure Form R is complete
- Result of completion errors
  - Violation
  - Form prevented from being entered into the database

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## RELEASE ESTIMATES

- Helpful hints for accurate release estimates
  - Always use your best available information
  - Estimate the quantity of Section 313 chemical, not the entire waste stream
  - Differentiate fugitive from stack emissions
  - Zero air emissions for VOCs are unlikely
  - Watch out for releases of Section 313 chemicals with qualifiers
  - Check your math and document your work!
- Result of release estimation errors
  - Incorrect release estimates and inconsistencies from year to year

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## OFF-SITE TRANSFER REPORTING

- Helpful hints for accurate off-site transfer reporting
  - Do not report intra-facility transfers as off-site transfers
  - Report the quantity of Section 313 chemical transferred, not the entire transfer quantity
  - Identify waste treatment, disposal, recycling, and energy recovery activities correctly
- Results of off-site transfer errors
  - Incorrect estimates (e.g., over-estimates)
  - Misclassification of facility's handling of Section 313 chemicals in wastes

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## WASTE MANAGEMENT AND SOURCE REDUCTION--SECTION 8.1

- Helpful hints for reporting quantity released, Section 8.1
  - Include off-site disposal quantities (reported in Section 6.2), on-site releases (reported in Sections 5.1 through 5.5), and releases to POTWs for metals and metal compounds only (reported in Section 6.1)
  - Do not include non-production-related, one-time events (e.g., catastrophic or remedial releases/transfers)
    - » These should be reported in Section 8.8

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## WASTE MANAGEMENT AND SOURCE REDUCTION--SECTIONS 8.2-8.7

### ■ For on-site waste management:

- Report the quantity of Section 313 chemical actually recovered for energy, recycled, or treated, not the total amount entering the energy recovery, recycling, or treatment unit

### ■ For off-site waste management:

- Conversely, report the total quantity sent off-site for recovery, recycling, or treatment
  - » You are not required to know the efficiency of the off-site unit

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## WASTE MANAGEMENT AND SOURCE REDUCTION

### ■ Energy recovery

- Do not report halons, metals, or metal compounds
- Do not include incineration activities

### ■ Treatment

- Metals and metal compounds cannot be destroyed; therefore, do not report as treated on or off-site

### ■ Catastrophic and remedial releases and transfers

- Section 8.8 quantities should be included in Sections 5-7 (as appropriate), but not in Sections 8.1-8.7

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## FEDERAL FACILITY IDENTIFICATION

### ■ Helpful hints for Federal facilities

- Correctly identify if GOCO or Federal facility submission in Part I, Section 4.2 of Form R
  - » Check box c. if Federal facility
  - » Check box d. if GOCO
- Correctly identify department or agency
- Use SIC codes in Part I, Section 4.5 that best describe the facility's activities
- Use EPA's new *EPCRA Section 313 Questions and Answers Addendum for Federal Facilities* (U.S. EPA, Office of Environmental Information, May 2000)

### ■ Results of incorrect Federal facility identification

- Double-counting

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## SUBMITTING REVISIONS

### ■ Revisions can be made in hardcopy

- Hardcopy revisions must be made in blue ink on a copy of the form originally submitted

### ■ For revisions made for reporting year 1991 or later, mark an "X" in the space marked "Enter "X" here if this is a revision" on page 1

### ■ Provide a new original signature and date for each revision

### ■ Send to EPA's EPCRA Reporting Center and to the appropriate state agency

### ■ For RY 2001 withdrawal and revisions processes, visit the TRI website at [http://www.epa.gov/tri/guide\\_docs/2002/rev\\_wthdrl.pdf](http://www.epa.gov/tri/guide_docs/2002/rev_wthdrl.pdf)

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